

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION
132 BRIGHTON PARK BLVD.
FRANKFORT, KENTUCKY 40601
TELEPHONE: (502) 573 - 0316
FAX: (502) 573-0344

COMMISSIONERS
JOE F. CHILDERS, CHAIR
WILLIAM D. DONAN
STEPHEN A. SANDERS

BRYON ALAN THOMPSON
GENERAL COUNSEL

**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF **DECEMBER 9, 2010**: A MEETING OF THE MINE SAFETY REVIEW COMMISSION (HEREINAFTER "MSRC" OR "COMMISSION") WAS HELD IN THE CONFERENCE AND HEARING ROOM OF THE COMMISSION LOCATED AT 132 BRIGHTON PARK BLVD., FRANKFORT KY.

- ❑ **Members Present:** Chair and Commissioner Joe F. Childers, Commissioner William D. Donan and Commissioner Stephen A. Sanders were present. Also in attendance MSRC Hearing Officer and General Counsel Bryon Alan Thompson.
- ❑ The meeting was **called to order** at 9:00 a.m. EST
- ❑ **Declaration of a Quorum:** Upon the call of the meeting, Commissioner Childers made a motion that a quorum was present, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- ❑ **Welcome Guests:** Hon. Mike Haines, Energy and Environment Cabinet General Counsel was present and also staff attorneys for OGC; Smock, Pete Thompson, Russell and Richardson who were representing the Office of Mine Safety and Licensing. The Office of General Counsel was assisted by Kari Sutherland, Mary McCoy, and Tara New.
- ❑ The **minutes** for the meeting on **11/4/10** were discussed. Commissioner Childers made a motion for approval, which was seconded. The motion carried unanimously, and was ratified by the Chair.

❑ **OMSL Motions for Sanctions, Permanent or one (1) year Revocation for failure to comply with terms of the Settlement Agreement & Final Order by MSRC resolving KRS 351.120(12) workplace suspension for alcohol and substance abuse:**

- 09-MSRC-176 Stephen R. Varney and 09-MSRC-179 Hi J. Carter, Jr., were called whereupon OMSL moved for **Continuance**. The matter was seconded as appropriate, carried unanimously and ratified by the Chair.
- 10-MSRC-023 Jerry Keith Thacker, was called and did not appear. Joe Childers recused citing a conflict. OMSL moved to grant its motion for **permanent revocation**, enhanced testing to insure future compliance and rehabilitation. The matter was seconded as appropriate and approved unanimously and was ratified.

❑ **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – “simple” revocations:**

- The Commission discussed each in turn the procedurally similar KRS 351.120(12) appeals from suspensions for alcohol and substance abuse policy violations of 10-MSRC-180 David Heath Akers, 10-MSRC-195 Michael Pollis, 10-MSRC-196 Arlin Vanover, 10-MSRC-199 James M. Booth and 10-MSRC-205 Dennis Mathews were each called in turn. Each Petitioner appeared and requested a **Settlement Agreement** to resolve the allegations. A motion was made to **grant**, each of their settlements which were seconded as appropriate. The motions carried unanimously, and were ratified by the Chair.
- 10-MSRC-194 Mark J. Morton and 10-MSRC-206 Anthony M. Vanover were called and OMSL moved for a **Continuance** for good cause shown. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 10-MSRC-132 Elba D. Slone was called and did not appear. OMSL moved for **revocation** for not less than one year. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 10-MSRC-198 Jonathan Hardison was called and through testimony and proof demonstrated that his suspension was in error. He moved to **sustain his appeal**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

The 11:00 a.m. Docket for KRS 351.120(12) workplace alcohol and substance abuse suspensions that were not appealed – “simple” one year revocations:

- 10-MSRC-185 Gregory Scott Shepherd was called and OMSL informed the Commission that it desired a **Show Cause Order**. A motion was made to **grant** the motion as above which was seconded as appropriate and approved unanimously and was ratified by the Chair.
- 10-MSRC-186 Jack Ramey was called but did not appear. For sufficient reason OMSL moved to **continue**. A motion was made to **grant** the motion as above which was seconded as appropriate and approved unanimously and was ratified by the Chair.
- 10-MSRC-191 Shawn, Griffith, 10-MSRC-201 Bill Woodruff, 10-MSRC-202 Charles Reed, 10-MSRC-203 Jonathan Archer and 10-MSRC-204 Paul Bowen were called but did not appear. OMSL moved for **revocation**. A motion was made to **grant** the motion as above which was seconded as appropriate and approved unanimously and was ratified by the Chair.

The 11:00 a.m. Docket for Reciprocity actions regarding Virginia Drug Sanctions:

None submitted for this meeting.

The 11:00 a.m. Docket for Motions to Modify prior Orders:

- 10-MSRC-172 Nick Miller was called. OMSL made a motion to delete 30 suspension because an administrative error caused his file to miss the last MB meeting. Thus an **Amended Settlement** was tendered. A motion was made to **grant** the motion as above which was seconded as appropriate and approved unanimously and was ratified by the Chair.

11:00 a.m. Appeal of Penalty Assessment

None submitted for this meeting.

The 11:00 a.m. Docket for “traditional” type cases:

- 10-MSRC-111 Viper Coal, **motion for summary judgment** as to liability was heard and **taken under submission**. Commissioner Childers made a motion to **grant**, which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was so Ordered. Chair Childers signed the Order.
- 10-MSRC-112 Jerry B. Combs was called regarding a settlement. OMSL requested a **show cause**. Commissioner Childers made a motion to **grant**, which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was so Ordered. Chair Childers signed the Order.
- 09-MSRC-164 Cheynne Mining & 09-MSRC-180 Hopkins & Howard and 10-MSRC-106 Glen D. May were called for approval of the **settlements**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and the Chair signed the Order.

Petitions for an Order filed by OMSL in roof control cases:

- 10-MSRC-212 Middle Fork Mining and 10-MSRC-213 Blair Coal Co were each called in turn both in regard to a roof control plan violation. OMSL moved for an **Order** noting that Blair had paid in full. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and the Chair signed the Order.

The 1:00 p.m. Docket for “traditional” type cases:

- 06-MSRC-015 Moore & Rutherford was called and subsequently the Commission sua sponte set the matter for a **hearing** on March 10, 2011. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and the Chair signed the Order.
- 10-MSRC-108 OMSL v. Shannon Owens, 10-MSRC-112 Jerry B. Combs, and 10-MSRC-123 OMSL v. Cumberland River Coal Co., Combs and Dishner were each called in turn. OMSL moved for a **continuance** for good cause shown. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and the Chair signed the Order.

Old Business

❑ **Ratification of Final Order:**

None scheduled for this meeting.

❑ **Administrative Hearings Update;**

The Commission discussed briefly the continuing high number of cases set for the next meeting on Thursday January 13, 2011, and the possibility of one or more traditional type hearings.

❑ **Status Report & Abeyances;**

None submitted for this meeting.

❑ **Appeals**

- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 07-MSRC-088 **Jerry J. Maggard**, et al. Hon. Smock, counsel for OMSL stated the matter has been **submitted** for a ruling.

New Business

❑ **Office & Administrative;**

- ❑ The General Counsel advised that the **mileage** will increase to forty four (44) cents per mile as of January 1, 2011.

❑ **Training**

- **Required Hearing Officer Training:** Next required Hearing Officer Training is in **June 2011** at the KY History Center.
- ❑ **Executive Session:** The Commission adjourned to conduct an Executive session to discuss the motions & settlements in the cases as above and then reconvened to issue its determinations.
- ❑ **Probable Cause Determinations**

- 10-MSRC-200 Charles B. Hall was presented for a determination of **probable cause**. Commissioner Childers recused citing a conflict. A motion to **grant**, was made and was seconded as appropriate. The motion carried unanimously, and was so Ordered.

- 10-MSRC-208 Webster County Coal was called for a **probable cause** determination on OMSL's counterclaim. A motion to **grant**, was made and was seconded as appropriate. The motion carried unanimously, and was so Ordered.

❑ **Settlement Agreements**

The Settlement Agreements were managed as indicated above in the Motions and suspensions sections.

- ❑ **The Time Memo and Travel Vouchers** were signed and submitted for payment by the General Counsel.
- ❑ **NEXT MEETING:** The Commissioners acknowledged that MSRC is regularly scheduled for a regular two day meeting on Starting on **Thursday January 13, 2011**.
- ❑ **Adjournment:** Commissioner Childers made a motion to adjourn, which was seconded by Commissioner Sanders. The motion carried unanimously, and was so Ordered.

The next meeting of the Mine Safety Review Commission will be held on Thursday January 13, 2011. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:



Chair Hon. Joe F. Childers
Mine Safety Review Commission

1/13/11
Date